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May 14, 2013

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Via ECF Filing

The Honorable Jacqueline Scott Corley
U.S. District Court of the Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

**Re: MediaTek Inc. v. Freescale Semiconductor, Inc.,
No. 4:11-cv-05341-YGR (JSC) (N.D. Cal.)**

Dear Judge Corley:

Defendant Freescale Semiconductor, Inc. respectfully requests that it be granted leave to offer sur-reply argument in connection with the parties' May 13, 2013, joint letter to the Court concerning MediaTek Inc.'s Interrogatory No. 23. Dkt. No. 109. As explained below, sur-reply is warranted to address MediaTek's new argument that the Court should compel Freescale to produce its entire design-wins database, which MediaTek raised for the first time in the reply portion of the joint letter, and to correct MediaTek's factual errors underlying this new argument.

MediaTek now asks for Freescale to produce its unabridged "'design wins' database." (Dkt. No. 109 at 5, 6 n. 3). This request is overly broad and unnecessary. It amounts to a request for information irrespective of its tie to the issues and products in this case. But Freescale's supplemental interrogatory response identifies Bates-range FSL-01711701-1711717, which comprise seventeen native excel spreadsheets derived from Freescale's design-wins database. These spreadsheets are not the mere "smattering of PowerPoints and similar presentations" that MediaTek contends. (*Id.* at 5.) Rather, these spreadsheets contain dozens of fields from the design-win database, including "customer" and "program name," and thus permit MediaTek to query data on arguably relevant design-wins for the accused products.

MediaTek does not even acknowledge these native design-win spreadsheets in its reply, let alone explain why they, along with the other documents Freescale identifies, fail to respond fully to Interrogatory No. 23 with the information in Freescale's possession, custody, or control. Instead, MediaTek offers only the conclusory assertion that Freescale has not completely responded to Interrogatory No. 23 and asserts that the documents identified by Freescale somehow "demonstrate Freescale's recalcitrance," pointing to a public presentation delivered by a Freescale Senior Vice President for support. (Dkt. No. 109 at 4-5.)

MORRISON | FOERSTER

The Honorable Jacqueline Scott Corley
May 14, 2013
Page Two

MediaTek's argument is incorrect. MediaTek assumes that Freescale's design-wins database contains information that it quite simply does not. Again, in general, Freescale's design-win database does not track the end-product that will incorporate a Freescale product following a design win, nor does Freescale track such end-product information in any other fashion, nor do Freescale's account representatives maintain this information. The purported evidence of "recalcitrance" on which MediaTek relies is not to the contrary. This document merely charts "active design engagements" — it does not suggest, however, that Freescale knows of the end-products that will incorporate its products as a result of these "active design engagements." (Dkt. No. 109-7 at 6.)

Absent any factual showing that the identified documents are an insufficient response to Interrogatory No. 23, MediaTek's request that Freescale produce its entire design-wins database should be denied. MediaTek has not shown why this entire database is relevant. To the extent that the database contains responsive information, it has been provided in the design-wins spreadsheets discussed above. Moreover, because the design-wins database contains information for numerous products that are not accused of infringement, MediaTek's request for production of the entire database is unquestionably overly broad.

Finally, MediaTek's assertions regarding Freescale's "approach to discovery" are not well-taken. (Dkt. No. 109 at 4.) Continually, MediaTek has sought to inject new issues in the parties' briefing to or arguments before the Court that it could have and should have raised during the meet-and-confer process. For example, in connection with MediaTek's previous motion to compel, MediaTek waited until oral argument to argue for the first time that it was unable to identify Freescale products as accused instrumentalities in its Preliminary Infringement Contentions because of the need to establish a geographic nexus to the U.S. Dkt. No. 77 at 4-5. MediaTek's "design wins" argument is no different.

MediaTek had ample opportunity to discuss Freescale's tracking of design wins during the meet-and-confer process, but did not do so. Instead, MediaTek waited until the joint letter to raise the issue of design wins, and even then did not ask for production of Freescale's design-win database until its "reply" portion of the letter. MediaTek's consistent flouting of its meet-and-confer obligations should be rejected, and its request for an order compelling a supplemental response to Interrogatory No. 23 should be denied.

Sincerely,

/s/ Alexander J. Hadjis

Alexander J. Hadjis

MORRISON | FOERSTER

The Honorable Jacqueline Scott Corley
May 14, 2013
Page Three

ATTESTATION

I, Rudy Y. Kim, am the ECF user whose ID and password are being used to file this Discovery Letter Brief. In compliance with General Order 45.X.B, I hereby attest that Alexander J. Hadjis has concurred in this filing.

Dated: May 14, 2013

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